

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

MR. CARLOS FRANCISCO
JORDAN-SAGASTUME
769 Cordell Way
Herndon, VA 20170,

Plaintiff,

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

VS.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY
Washington, D.C. 20528,

Defendant.

Case: 1:08-cv-00077
Assigned To : Roberts, Richard W.
Assign. Date : 1/15/2008
Description: FOIA/Privacy Act

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

PRELIMINARY STATEMENT

1. This is an action under the Freedom of Information Act, as amended, 5 U.S.C. § 552 (“FOIA”), for declaratory, injunctive, and other appropriate relief, seeking, principally, the immediate production of agency records requested by plaintiff Mr. Carlos Francisco Jordan-Sagastume (“Mr. Jordan-Sagastume”) from defendant United States Department of Homeland Security (“DHS”) regarding Mr. Jordan-Sagastume’s September 15, 2006 apprehension and unlawful detainment.

2. DHS has violated FOIA by: (i) improperly withholding and redacting responsive records, including failing to produce reasonably segregable portions of withheld responsive records; (ii) conducting an inadequate search for requested records; and (iii) failing to respond to Mr. Jordan-Sagastume's appeal of DHS's response to his request for records within the time period mandated by FOIA.

3. Mr. Jordan-Sagastume seeks: (i) a declaration that the records sought are subject to disclosure under FOIA; (ii) affirmative injunctive relief requiring DHS to immediately produce all responsive records that have been unlawfully withheld or redacted, and to conduct an adequate search for requested records; and (iii) an award of reasonable attorneys' fees and other litigation costs.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

5. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

6. Declaratory relief is authorized by 28 U.S.C. §§ 2201-2202 and Rule 57 of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 57.

PARTIES

7. Plaintiff Jordan-Sagastume is an alleged alien pending immigration removal proceedings before the Executive Office for Immigration Review (EOIR) in Arlington, VA..

8. Defendant DHS is a department of the Executive Branch of the United States Government. DHS is an agency within the meaning of 5 U.S.C. § 552(f)(1).

FACTUAL ALLEGATIONS

9. The records at issue in this complaint are essential to Mr. Jordan-Sagastume's defense in the ongoing EOIR proceeding.

10. On September 15, 2006, DHS and officers of the Robinson Township Police Department engaged in illegal racial profiling and arrested Mr. Jordan-Sagastume without probable cause let alone reasonable suspicion.

11. While being detained, DHS agents interrogated Mr. Jordan-Sagastume under highly coercive circumstances, and through their wrongful interrogation in violation of his rights under the Fourth Amendment to the United States Constitution, obtained information from Mr. Jordan-Sagastume which DHS now impermissibly attempts to use in removal proceedings against Mr. Jordan-Sagastume in violation of his rights under the Fifth Amendment to the United States Constitution.

12. The removal proceedings are pending before the Honorable Paul W. Schmidt of the United States Immigration Court in Arlington, Virginia, and has been assigned DHS File Number A00-021-787.

13. Mr. Jordan-Sagastume has obtained *pro bono* counsel, Christopher Nugent, of Holland & Knight LLP, in connection with the removal proceedings.

14. On July 12, 2007, Judge Schmidt orally entered a Scheduling Order that set briefing deadlines in the Immigration Court proceedings and, *inter alia*, required Mr. Jordan-Sagastume to file a Motion to Terminate on or before September 12, 2007.

15. On July 13, 2007, Mr. Nugent sent, via regular mail, first class postage pre-paid, an expedited Freedom of Information Act Request on Mr. Jordan-Sagastume's behalf to the U.S. Citizenship and Immigration Services National Record Center (the "FOIA Request"). The FOIA Request sought: (i) Mr. Jordan-Sagastume's entire Alien "A" File (A# 00-021-787), including but not limited to Mr. Jordan-Sagastume's "Apprehension Record," and I-213 record of deportable alien; (ii) all documents, memoranda, and correspondence (including emails and documents memorializing telephone conversations) related to Mr. Jordan-Sagastume's arrest and detention on September 15, 2006 at 1000 Westpointe Drive, Apt #211, in Pittsburgh, PA; and (iii) all documents, memoranda, and correspondence (including emails and documents memorializing

telephone conversations) between DHS and any law enforcement agents present at 1000 Westpointe Drive in Pittsburgh, PA on September 15, 2006. *See* FOIA Request attached as Exhibit A.

16. On August 8, 2007, Director T. Diane Cejka of the U.S. Citizenship and Immigration Services ("USCIS") denied expedited processing treatment of the FOIA request. *See* August 8, 2007 USCIS letter to Mr. Nugent attached as Exhibit B.

17. On September 4, 2007, Counsel for the Immigration and Customs Enforcement, U.S. Department of Homeland Security, Anita Snyder, along with Mr. Nugent, filed in the Immigration Court, a Joint Motion for Continuance of Briefing Deadlines on the grounds that Mr. Jordan-Sagastume had not received documents in response to the FOIA Request. *See* September 4, 2007 Joint Motion for Continuance attached as Exhibit C.

18. Judge Schmidt, in the Immigration Court, graciously granted the Joint Motion for Continuance of Briefing Deadlines on September 5, 2007, and Mr. Jordan-Sagastume's Motion to Terminate became due on or before October 29, 2007.

19. On September 17, 2007, Mr. Nugent responded to the USCIS's denial of expedited treatment of the FOIA Request and requested USCIS to reconsider its decision. *See* September 17, 2007 letter to USCIS attached as Exhibit D.

20. After DHS again failed to produce documents responsive to the FOIA Request, on October 26, 2007, Mr. Jordan-Sagastume filed in the Immigration Court a Second Motion for Continuance of Briefing Deadlines, which subsequently (after being granted) extended the deadline for Mr. Jordan-Sagastume's Motion to Terminate to on or before December 13, 2007. *See* October 26, 2007 Motion for Continuance and Order attached as Composite Exhibit E.

21. On November 23, 2007, Mr. Nugent sent another letter to USCIS reiterating the need for Mr. Jordan-Sagastume to obtain documents responsive to the FOIA Request prior to the December 13, 2007 deadline. *See* November 23, 2007 Letter to USCIS attached as Exhibit F.

22. On November 28, 2007, over four months after Mr. Jordan-Sagastume submitted the FOIA Request, DHS finally mailed its response to the FOIA Request (the "DHS FOIA Response"). The DHS FOIA Response cover letter is attached as Exhibit G.

23. Mr. Nugent received the DHS FOIA Response on December 1, 2007.

24. The DHS FOIA Response withheld a total of eleven pages of critical information pertaining to Mr. Jordan-Sagastume's arrest and detention, including but not limited to Mr. Jordan-Sagastume's apprehension record. DHS asserted that the pages withheld were exempt from disclosure under 5 U.S.C. 552 § (b)(2), (b)(5), (b)(7)(c) and (b)(7)(e).

25. DHS failed to provide reasonably segregable portions of the eleven pages of withheld responsive records, as required by 5 U.S.C. § 552(b).

26. DHS redacted other responsive records on the grounds that the information redacted were exempt from disclosure under 5 U.S.C. 552 § (b)(2), (b)(5), (b)(7)(c) and (b)(7)(e).

27. On December 10, 2007, Mr. Nugent, on behalf of Mr. Jordan-Sagastume, promptly and timely appealed the DHS FOIA Response (the "FOIA Appeal"). The FOIA Appeal is attached as Exhibit H at Tab C.

28. The FOIA Appeal sought, among other things: (i) DHS's reconsideration of all redactions to the responsive documents and the release of all reasonably segregable portions of the eleven pages of withheld responsive records; and (ii) an adequate search by DHS reasonably calculated to produce documents missing from the DHS FOIA Response, including the

communications that were provided by Mr. Nugent with DHS that were not included in DHS's production.

29. In addition, on December 10, 2007, in the Immigration Court proceedings, Mr. Jordan-Sagastume filed a Third Motion for Continuance of Briefing Deadlines based on the fact that the DHS FOIA Response was insufficient and that the FOIA Appeal was pending. *See* December 10, 2007 Motion for Continuance attached as Exhibit H.

30. On December 11, 2007, Judge Schmidt in the Immigration Court proceedings, graciously granted the Third Motion for Continuance and, *inter alia*, extended the deadline for Mr. Jordan-Sagastume to file a Motion to Terminate to on or before January 28, 2008. *See* December 11, 2007 Order attached as Exhibit J.

31. DHS received the FOIA Appeal on December 11, 2007.

32. On December 18, 2007, DHS advised Mr. Jordan-Sagastume that the FOIA Appeal has been taken under consideration. *See* December 18, 2007 Letter attached Exhibit J.

33. 5 U.S.C. § 552(a)(6)(A), provides DHS with a maximum 20 days from its receipt of the FOIA Appeal, until January 14, 2008, to make a determination with respect to the Appeal.

34. To further expedite matters and acting in good faith in order to comply with Judge Schmidt's generous deadline extension in the Immigration Court proceedings, Mr. Jordan-Sagastume's counsel sent via overnight mail and facsimile a letter dated January 9, 2008, to the Chief of FOIA Appeals, Tracy Bellissime, regarding his need to receive the documents in question. *See* January 9, 2008 letter attached as Exhibit K.

35. To date, more than 20 days have passed since DHS received the Appeal, but DHS has yet to make a determination on same as required under 5 U.S.C. § 552(a)(6)(A), and therefore the appeal is deemed denied..

36. Accordingly, under 5 U.S.C. § 552(a)(6)(C)(i), Mr. Jordan-Sagastume is deemed to have exhausted his administrative remedies under FOIA.

37. Time is of the essence due to the fact that the deadline for the Mr. Jordan-Sagastume to file motion to terminate in the Immigration Court proceedings is January 28, 2008. Without unredacted, fully disclosed documents, Mr. Jordan-Sagastume will be severely prejudiced and unable to adequately defend himself in the removal proceedings.

38. In addition, Mr. Jordan-Sagastume is clearly entitled to recover his fees should he succeed in this action.

COUNTS FOR RELIEF

Count One

Failure to Provide Responsive Records

39. Mr. Jordan-Sagastume realleges and incorporates paragraphs 1-38.

40. On July 13, 2007, Mr. Jordan-Sagastume properly submitted a request to DHS for records that are public records subject to FOIA.

41. DHS failed to provide reasonably segregable portions of the eleven pages of withheld responsive records, as required by 5 U.S.C. § 552(b), and despite the near certainty that some portions of the eleven pages of responsive records are reasonably segregable.

42. DHS improperly relied on exemptions under 5 U.S.C. 552 § (b)(2), (b)(5), (b)(7)(c) and (b)(7)(e) in withholding and redacting other responsive records.

43. Accordingly, DHS's withholding and redaction of responsive documents is improper and violates FOIA.

Count Two

Failure to Conduct an Adequate Search for Responsive Records

44. Mr. Jordan-Sagastume realleges and incorporates paragraphs 1-43.

45. DHS conducted an inadequate search for responsive records in violation of 5 U.S.C. § 552(a)(3).

46. Upon information and belief, DHS possesses more communications and other relevant information in Mr. Jordan-Sagastume's file.

47. Accordingly, DHS's failure to adequately search for and produce the related arrest records is improper and violates FOIA.

WHEREFORE, Mr. Jordan-Sagastume respectfully requests that this Court:

- a) Declare that DHS's failure to provide reasonably segregable portions of the eleven pages of withheld responsive records is unlawful under FOIA;
- b) Declare that DHS's withholding and redaction of responsive records is unlawful under FOIA;
- c) Declare that DHS's failure to conduct an adequate search for requested records is unlawful under FOIA
- d) Declare that DHS's failure to respond to the FOIA Appeal within the statutory time period is unlawful under FOIA;
- e) Enter an affirmative injunction that directs DHS to search for and make all requested records available to Mr. Jordan-Sagastume, unredacted, and without any further delay;

- f) Award Mr. Jordan-Sagastume reasonable attorneys' fees and other litigation costs per a new statutory provision known as The Openness Promotes Effective in our National Government Act or OPEN Government Act of 2007, Pub. L. 110-175 (Dec. 31 2007), Sec. 4(a)(2) amending section 555(a)(4)(E) of Title 5.
- g) Grant Mr. Jordan-Sagastume any further relief this Court deems just and proper.

Respectfully Submitted,



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TABLE OF EXHIBITS

Tab	Document Description	# of Pages
A	July 13, 2007 FOIA Request	1-14
B	August 8, 2007 USCIS letter to Mr. Nugent	15-17
C	September 4, 2007 Joint Motion for Continuance	18-22
D	September 17, 2007 letter to USCIS	23-40
E	October 26, 2007 Motion for Continuance and Order	41-46
F	November 23, 2007 letter to USCIS	47-63
G	November 28, 2007 DHS FOIA Response	64-66
H	December 10, 2007 FOIA Appeal Attaching Motion for Continuance dated same	67-140
I	December 11, 2007 Order	141-143
J	December 18, 2007 letter from USCIS	144-145
K	January 9, 2008 letter to USCIS	146-150